

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

UNITED STATES OF AMERICA)
)
) Case No. 3:93CR00010-01
)
 v.) **OPINION**
)
 OBED HOYTE,) By: James P. Jones
) United States District Judge
 Defendant.)

Obed Hoyte, Pro Se Defendant.

On April 8, 1994, the court sentenced defendant Obed Hoyte to 420 months' imprisonment, ECF No. 188, and on August 16, 2006, I dismissed Hoyte's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. *Hoyte v. United States*, No. 7:06CV00078, 2006 WL 2375526, at *1 (W.D. Va. Aug. 16, 2006). Nearly ten years later, Hoyte has filed three motions: Motion to Set Aside, Void Judgment Pursuant to Rule 60(b); Motion for Bail/Release; and Motion to Amend 60(b) Motion. ECF Nos. 466-468. The Motion to Set Aside, Void Judgment and its accompanying Motion to Amend attack the validity of the convictions and sentence.

A Rule 60(b) motion that seeks to remedy some defect in a prior collateral review process should be deemed a "proper" motion to reconsider. *United States v. Winestock*, 340 F. 3d 200, 207 (4th Cir. 2003). However, a Rule 60(b) motion

that seeks to add a new ground for collateral relief is in fact a second or successive collateral attack, regardless of how the motion is captioned. *Calderon v. Thompson*, 523 U.S. 538, 554 (1998).

Hoyte's Rule 60(b) motion falls squarely within the class of motions that must be construed as a new § 2255 motion. Because Hoyte fails to establish that the United States Court of Appeals for the Fourth Circuit has authorized him to file a successive § 2255 motion, the construed § 2255 motion must be dismissed without prejudice as successive pursuant to 28 U.S.C. § 2255(h). Consequently, the Motion for Bail/Release is denied as moot, and the Motion to Amend the Motion to Set Aside, Void Judgment is denied as futile.

DATED: February 7, 2017

/s/ James P. Jones
United States District Judge